HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 746 of 2007

Between:

Velagapudi Rama Krishna Siddhartha Engineering College, Vasanthanagar, P.O Vijayawada – 7, Rep., by its Secretary and Correspondeent and another

… Appellants

And

M. Sambasiva Rao and two others

… Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri C. Kodanda Ram

Counsel for respondent No.1 : Shri P.S. Rajasekhar

17th September, 2007

Per G.S. Singhvi, CJ

This is an appeal for setting aside order dated 28.6.2007 passed by the learned Single Judge in WPMP No. 17148 of 2007 in Writ Petition No. 13677 of 2007, whereby he granted the prayer made by the petitioner (respondent No.1 herein) for his reinstatement as Assistant Librarian in V.R. Sidhartha Engineering College, Vijayawada (for short 'the college') and for payment of arrears of salary from 18.9.2003.

We have heard learned counsel for the parties and scrutinized the record. Ordinarily, the Division Bench is extremely loath to

interfere with the discretion exercised by the learned Single Judge to pass an interim order in favour or against the petitioner, but having regard to the peculiar facts of the case and the unusual character of the ex parte interim order passed by the learned Single Judge, we have considered it proper to exercise power under Clause 15 of the Letters Patent.

Respondent No.1 was employed as Assistant Librarian in the services of the college. By an order dated 18.9.2003, the management of the college removed him from service on the charge of misappropriation of funds and loss of books. The appeal filed by respondent No. 1 against the order dated 18.9.2003 was allowed by Director of Technical Education, Andhra Pradesh (respondent No. 3 herein) vide his order dated 23.4.2007. That order is subject matter of challenge in the appeal preferred by the appellants, which is pending adjudication before Secretary, Department of Technical Education.

It is borne out from the record that in less than two months of acceptance of his appeal, respondent No.1 filed Writ Petition No. 13677 of 2007 for issue of a mandamus to respondent No. 3 (appellant No. 1 herein) to implement order dated 23-4-2007 and to pay him arrears of salary from 18-9-2003. Along with the writ petition, respondent No. 1 filed WPMP No. 17148 of 2007 for issue of an interim mandatory direction to non-petitioner No. 3 to take him into service and pay arrears of salary from 18-9-2003. This shows that the prayer made in the miscellaneous petition was substantially similar to the one made in the main writ petition.

The learned Single Judge, without even issuing notice to the contesting parties i.e., non-petitioner Nos.3 and 4 in the writ petition (the appellants herein) passed the following interim order:

> "There shall be interim direction as prayed for."

Shri C. Kodanda Ram, learned counsel for the appellant argued and we are inclined to agree with him that the ex parte interim direction given by the learned Single Judge has the effect of virtually allowing the writ petition and such an order could not have been made without issuing notice and giving opportunity of hearing to the parties in the main writ petition.

Shri P.S. Rajasekhar, learned counsel for respondent No.1 tried to support the direction given by the learned Single Judge and submitted that the Division Bench may not entertain the appeal, because the vacate petition filed by the appellants is pending consideration, but we have not felt convinced.

In our opinion, the pendency of the vacate petition cannot be made a ground for sustaining the order under challenge, which as mentioned above, could not have been passed without giving opportunity to the appellants to file counter affidavit and contest the case set up by respondent No. 1.

In the result, the appeal is allowed. The order impugned in the appeal is set aside. However, liberty is given to respondent No. 1 to make request before the learned Single Judge for early hearing of the miscellaneous petition filed by him.

In view of the above, WAMP No. 1493 of 2007 filed by the appellants for stay of the order of the learned Single Judge is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

September 17, 2007
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